A husband has by the common law a legal right to the society and services of his wife. Schouler, *Husband and Wife*, sec. 143. He may maintain an action for an injury to this right. *Kelly v. New York, N. H. & H. R. R. Co.* (1897) 168 Mass. 308, 46 N. E. 1063; *Birmingham Southern Ry. Co. v. Lintner* (1904) 141 Ala. 420, 38 So. 363. The husband's right to recover for loss of *consortium* has been denied, however, since the enactment of legislation enlarging the rights of married women. *Bolger v. Boston El. Ry. Co.* (1910) 205 Mass. 420, 91 N. E. 389. But the common law right of recovery was always limited to damages accruing before the wife's death. *Baker v. Bolton* (1808, N. P.) 1 Camp. 493. In the absence of statute, damages resulting solely from the death are not an element of recovery. *Hyatt v. Adams* (1867) 16 Mich. 180; *Covington Street Ry. Co. v. Packer* (1872, Ky.) 9 Bush, 455. The English courts have qualified this general rule and have held that where the conduct of the tort-feasor resulting in the death of the plaintiff's wife constitutes also a breach of a contract duty to the husband, and the death is not therefore an essential part of his cause of action, damages resulting from the death will be permitted as an element of recovery. *Jackson v. Watson* (C. A.) [1909] 2 K. B. 193. The American authorities, however, are opposed to such a distinction, and hold that the general rule is as well applicable to actions of contract as to actions of tort. *Sheerlag v. Kelley* (1908) 200 Mass. 232, 86 N. E. 293; *Duncan v. St. Luke's Hospital* (1906) 113 App. Div. 68, 98 N. Y. Supp. 867, affirmed 192 N. Y. 580, 85 N. E. 1109. The principal case was an action on the contract. It would seem, therefore, that although there did exist in favor of the husband a cause of action, his damages, according to the American authorities, were merely nominal, unless it should appear that actual damages were suffered prior to the wife's death.

DEEDS — DELIVERY IN ESCROW — REVOCATION — STATUTE OF FRAUDS. — The plaintiffs entered into an oral agreement to exchange land with the defendants, M. and P. Both deeds were to be deposited with the other defendant, an attorney, who was to deliver the deeds to the respective grantees after examining titles. M. and P. did so deposit their deed, but later instructed the attorney not to deliver it. The plaintiffs' deed was not deposited until after this instruction had been given. The plaintiffs sued to compel a delivery. *Held*, that as there was no written contract or memorandum to satisfy the statute of frauds, the depositary in escrow could not be compelled to deliver the deed. *McLain v. Healy* (1917, Wash.) 168 Pac. 1.

The rule announced in the principal case, which practically overrules the case of *Manning v. Foster* (1908) 49 Wash. 541, 96 Pac. 233, and follows a still earlier case, makes clear the position of the state of Washington on this point. This view has been supported by text-books and by a few recent cases. 1 Devlin, *Deeds* (3d ed.) sec. 313; *Campbell v. Thomas* (1877) 42 Wis. 437; *Clark v. Campbell* (1901) 23 Utah 569, 65 Pac. 496; *Holland v. McCarthy* (1916) 173 Cal. 597, 160 Pac. 1069. Though rules concerning delivery in escrow were developed at an early date in our law, there was no suggestion of this rule until the case of *Fitch v. Bunch* (1866) 30 Cal. 208. It is apparently based upon the idea that the rights and powers created by a deposit in escrow depend wholly upon contract. See *Campbell v. Thomas, supra.* Such a rule puts an unfortunate limitation upon the utility of the conditional delivery of conveyances. In many cases, at least, it is the intention in a delivery in escrow, and is essential to its purpose, that it be irrevocable. *Fine v. Lasater* (1913) 110 Ark. 425, 161 S. W. 1147. Indeed, it is the very nature of an escrow that, as to the grantor, the transaction is entirely executed. The delivery of a deed in escrow creates in the grantee of the deed a legal power to obtain title to

the realty by mere performance of the condition of the escrow. (1913) 23 YALE LAW JOURNAL, 33; and see *Farley v. Palmer* (1870) 20 Oh. St. 223, 225. If this is the correct analysis of the nature of an escrow it is apparent that the section of the Statute of Frauds relating to contracts has no application. If the Statute applies at all it must be by virtue of the section which relates to the conveyance of interests in land. The physical act of handing over a deed, either to the grantee or to a third person, may always be explained by oral testimony to show whether or not intended as a "delivery" at all. Why not, then, to show whether it was a conditional or an unconditional delivery? If it appears that the grantor by the delivery intended to create a legal power in the grantee to obtain title by performing a condition, that is, intended to create an escrow, why should not effect be given to that intent? If the delivery was absolute, the grantee is vested with all the rights, powers, etc., which make up title; if the delivery was in escrow, he is vested with the power to acquire title. There seems no more reason to apply the Statute of Frauds to one conveyance than to the other. The question remains whether a delivery in escrow had in fact taken place in the principal case. It may be doubted whether the grantor defendants intended the delivery of their deed to the attorney to operate as an escrow until the other parties had made a similar delivery. But if they did, it is submitted, effect should have been given to it. To require an enforcible executory contract in addition to a conditional delivery goes a long way toward abolishing the doctrine of escrows. See Tiffany, *Conditional Delivery of Deeds* (1914) 14 COLUMBIA L. REV. 380, 398 *et seq.*

EVIDENCE — DYING DECLARATIONS — "MURDERED" AS AN EXPRESSION OF OPINION.—In a homicide trial the state offered in evidence the testimony of a witness who swore that the deceased made a dying declaration to the witness to the effect that the defendant "murdered" him. The trial court admitted the evidence. *Held,* that this was error as it was a mere expression of opinion by the dying man involving a conclusion of law. *Pilcher v. The State* (1917, Ala.) 77 So. 75.

The statement, "He killed me" satisfies the requirements for a dying declaration and is admissible everywhere as a statement of a fact. *Parker v. State* (1914) 10 Ala. App. 53, 65 So. 90. The fact is the belief of the deceased that he met his death at the hands of the defendant. But when anything beyond this is involved in the statement some courts exclude it as an expression of an opinion. *Jones v. Commonwealth* (1898, Ky.) 46 S. W. 217 ("shot me for nothing"); *State v. Sale* (1902) 119 Ia. 1, 92 N. W. 680 (the deceased "was to blame"); *Berry v. State* (1897) 63 Ark. 382, 38 S. W. 1038 (the whiskey was "poisoned"). A larger number of courts, though with considerable hesitation, have admitted such statements. *State v. Lee* (1900) 58 S. C. 335, 36 S. E. 706 ("killed me for nothing"); *Gerald v. State* (1901) 128 Ala. 6, 29 So. 614 ("killed me for nothing"); *Powers v. State* (1897) 74 Miss. 777, 21 So. 657 ("killed me without cause"); *Shenkenberger v. State* (1900) 154 Ind. 630, 57 N. E. 519 ("poisoned by my mother-in-law"); *State v. Gile* (1894) 8 Wash. 12, 35 Pac. 417 ("butchered" by the doctors). It is believed that these difficulties follow from too close an application of the opinion rule, the object of which is to require witnesses to place the facts in detail before the jury, leaving the latter to draw the necessary inferences. Where the declarant is dead it is impossible to obtain from him any more detailed facts to guide the jury in drawing such inferences. As Professor Wigmore declares, "Some of the rulings, in their pedantic technicality, would be a scandal to any system of evidence supposed to be based on reason and common sense." Wigmore, *Evidence,* sec. 1447. From a technical viewpoint the word "murdered" is a conclusion of mixed law